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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DROESCH, KRISTEN L

ART UNIT PAPER NUMBER

3762

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DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/738,868

Applicant(s)

STAHMANN ET AL.

Examiner

Kristen L Droesch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 and 26-40 is/are allowed.
- 6) ☒ Claim(s) 21, 24 and 41 is/are rejected.
- 7) ☒ Claim(s) 22, 23 and 42-44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/23/04 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 21, 24, and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by Conley et al. (6,415,175).

Regarding claim 21, Conley et al. shows a programmer device (60) comprising circuitry (106) adapted to communicate with a medical device; a display (102) and a processor (76) adapted to communicate with the circuitry and display and to provide a histogram of the data on the display as two or more statistical distributions for the two or more sites (atrium and ventricle), where the statistical distributions are at least two right ventricle distributions (paced and sensed) or at least two right atrium distributions (paced and sensed) (Figs. 3, 6A-6B).

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With respect to claim 24, Conley et al. shows the data includes both sensed intrinsic cardiac events and paced cardiac events (Figs. 6A-6B).

Regarding claim 41, Conley et al. shows a device (60) with a processor (76), communication circuitry (62, 106) a display (102), and a memory (56) encoded with software executable by the processor to retrieve data from the communication circuitry regarding the cardiac events occurring at the two or more sites (atrium and ventricle); form a statistical distribution for each of the two or more sites (atrium and ventricle); and display the statistical distribution for each of the two or more sites (atrium and ventricle) in a histogram; the histogram including a plurality of histogram bins including a representation for at least a portion of the statistical distribution for each of the two or more sites (Figs. 6A-6B; Col. 9, lines 13-58)

The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. Specifically, the statements of intended use that have not been considered because they are applicable to the type of data and the locations of the measurements made by the medical device. The medical device has not been positively recited as an element of the claims. The Conley et al. device would be capable of displaying this type of data in histograms, provided this data was received from a medical device.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

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inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

*Allowable Subject Matter*

4. Claims 1-20, and 25-40 are allowed.

5. Claims 22-23 and 42-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 1-20, and 25, the prior art of record fails to teach or suggest a device including communication circuitry adapted to communicate with a medical device; and display means or a processor and display adapted for displaying a histograms of both a right ventricular cardiac event distribution and a left ventricular cardiac event distribution.

With respect to claims 22-23, the prior art of record fails to teach or suggest a device including communication circuitry adapted to communicate with a medical device; a display; and a processor adapted to provide a histogram of cardiac event data on the display as two or more statistical distributions for two or more sites in combination with the cardiac event distribution being determined by dividing an event count bin by a denominator, and where the denominator is the sum of a total primary site sense count, a total primary site pace count *and* a total secondary pace count .

Regarding claims 26-40, the prior art of record fails to teach or suggest a method or computer readable medium encoded with software executing the method of retrieving data regarding cardiac events at two or more sites; and displaying the data in a histogram as two or more statistical distributions for the two or more sites and the histogram includes a right

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ventricular cardiac distribution and a left ventricular cardiac event distribution. Conley et al. shows a method of retrieving data regarding cardiac events at two or more sites; and displaying the data in a histogram as two or more statistical distributions for the two or more sites, however Conley et al. does fails to teach or suggest the histogram includes a right ventricular cardiac distribution and a left ventricular cardiac event distribution, rather Conley et al. shows a right ventricular cardiac distribution and a right atrium cardiac event distribution.

Regarding claims 42-44, the prior art of record fails to teach or suggest a device that has a *memory encoded with a software program* to form a statistical distribution for two or more sites, display a statistical distribution for each of the two or more sites in a histogram including a plurality of histogram bins wherein each histogram bin includes a representation for at least a portion of a left ventricular cardiac event distribution and a representation for at least a portion of a right ventricular cardiac event distribution.

### ***Response to Arguments***

6. Applicant's arguments filed 1/23/03 have been fully considered but they are not persuasive.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen L Droesch whose telephone number is 703-605-1185. The examiner can normally be reached on M-F, 10:00 am - 6:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



kld



JEFFREY R. JASTRZAB  
PRIMARY EXAMINER  
4/14/09